IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 37004 of 2007(E)

PETITIONER:

SULOCHANA, D/O.NALINI,
CHARUVILA PUTHEN VEEDU, CHERUVAIKKAL VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.V.MADHURIPAN PILLAI

RESPONDENTS:
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1. S.SANTHA, D/O.SUMATHI,
RENJITH NILAYAM, CHEMAPAZHANTHY,
PANGAPPARA VILLAGE, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 37004 OF 2007

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Dated this the 14th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Thiruvananthapuram in I.A.4794/05 in O.S.403/04. A suit was filed paying 1/10th of the Court fee and when there was an order to pay the balance Court fee permission was sought to prosecute the case as an indigent person and the Court below granted such a relief. It is against that decision the defendant in the suit has come up with this writ petition.

2. In the interim application it is stated that the husband is a mentally ill person and that she has got only casual labourer's work. It is also averred that she is having only 5 cents of land and a house and it is situated in an interior part of the place and it will not fetch even Rs.1,000/- per cent. Therefore she has sought permission to sue as an indigent person.

3. The respondent had filed an objection stating that the petition is not liable to be allowed and the valuation shown as Rs.1,000/- is incorrect and the averment that the husband is treated for mental illness is also liable to be rejected. The Court below, as contemplated under law, issued notice to the Collector but no report was filed and thereafter the Court on hearing both the counsel disposed of the case permitting her to continue the proceeding as an indigent person. It has to be stated that in the counter statement there is no specific plea to the effect that the plaintiff is having any other property other than 5 cents of land described in the petition. It is also seen from the order that the counsel for the defendant only argued that point.

4. In a case of no means coming under order 33 of the CPC that one shall not be so meticulous as to the means when compared to one under Section 51 of CPC. A person who is residing in a house is not expected to sell the house for the purpose of paying the Court fee to prosecute a proceeding. It will cause heart burn and that is why the

legislature has thought it right to help such persons by permitting them to file the case as indigent person. In the absence of any evidence and no contravention of the averments in the petition that she is having any land other than this 5 cents of property, I feel the Court below was just in passing the order permitting the plaintiff to sue as an indigent person. It is true that the Court below would have examined the petitioner but in the light of the statements in the affidavit as well as in the counter statement, most probably the Court felt that it is not necessary and I do not find any fault with the Court below for doing so. Therefore the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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